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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE USA, INC., *et al.*,
Plaintiffs,
v.
SAP AG, *et al.*,
Defendants.

CASE NO. 07-CV-01658 PJH (EDL)

**DECLARATION OF JENNIFER
GLOSS IN SUPPORT OF
PLAINTIFFS' RESPONSE TO
DEFENDANTS' ADMINISTRATIVE
MOTION TO FILE PLAINTIFFS'
DOCUMENTS UNDER SEAL**

Date: August 18, 2009
Time: TBD
Place: Courtroom E, 15th Floor
Judge: Hon. Elizabeth D. Laporte

Case No. 07-CV-01658 PJH (EDL)

DECLARATION OF JENNIFER GLOSS IN SUPPORT OF PLAINTIFFS' RESPONSE TO DEFENDANTS' ADMINISTRATIVE
MOTION TO FILE PLAINTIFFS' DOCUMENTS UNDER SEAL

1 I, Jennifer Gloss, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and am Senior
3 Corporate Counsel at Oracle USA, Inc. ("Oracle"). I have personal knowledge of the facts stated
4 within this Declaration and could testify competently to them if required.

5 **Exhibits Submitted in Support of Defendants' Motion for Sanctions**

6 2. I have reviewed the documents and testimony identified as Exhibits D, J, K, L, P
7 and Q of the Declaration of Elaine Wallace in support of Defendants' Motion for Sanctions
8 Pursuant to Fed. R. Civ. P. 37(c) and 16(f) (the "Wallace Declaration"). Other than Exhibit D,
9 which Oracle agrees can be filed publicly, each of these exhibits contains non-public,
10 commercially sensitive and confidential information, the disclosure of which would create a risk
11 of significant competitive injury and particularized harm and prejudice to Oracle.

12 3. Oracle has narrowly tailored its request by only requesting redaction or sealing of
13 the specific passages, documents and information that contain the most commercially sensitive
14 and confidential information. These exhibits contain the following types of confidential and
15 commercially sensitive information justifying their protection under the sealing rules of this
16 Court, including Rule 26(c), Local Rule 79-5, and this Court's Standing Order on Confidential
17 and Sealed Documents, particularly given that the cited testimony and documents come from the
18 highest possible executive levels at Oracle:

19 a. Ex. J contains testimony from the deposition of Larry Ellison, Oracle's
20 CEO, taken May 5, 2009 (pages 10-17 and 64-65). These portions of Mr.
21 Ellison's testimony contain non-public, commercially sensitive and
22 confidential financial figures and estimates with regard to harm Oracle
23 has suffered, as well as non-public, commercially sensitive statements
24 regarding internal competitive strategy. The disclosure of such
25 confidential information would create a risk of significant competitive
26 injury and particularized harm and prejudice to Oracle.

27 b. Ex. K contains testimony from the deposition of Charles Phillips,
28 Oracle's co-President, taken April 17, 2009 (pages 17-21). These

1 portions of Mr. Phillips' testimony contain non-public, commercially
2 sensitive and confidential financial figures and estimates with regard to
3 harm Oracle has suffered, non-public, commercially sensitive and
4 confidential internal competitive strategies, and non-public, commercially
5 sensitive and confidential information concerning Oracle's business
6 model and related strategic policies. The disclosure of such confidential
7 information would create a risk of significant competitive injury and
8 particularized harm and prejudice to Oracle.

9 c. Ex. L contains testimony from the deposition of Juergen Rottler,
10 Executive Vice President Oracle Customer Services, taken May 13, 2009
11 (pages 33-44, 47-54, 80-82, 90-97, 200-201 and 254). Portions of Mr.
12 Rottler's testimony contain discussions of confidential, commercially
13 sensitive and internal customer negotiations, as well as Oracle's internal
14 analyses and decision-making and approvals procedures relating to such
15 confidential negotiations and exceptions to Oracle's standard policies.
16 They also contain private and confidential customer-specific financial
17 information, non-public, commercially sensitive and confidential
18 information regarding Oracle's pricing strategies and approvals processes,
19 and non-public, commercially sensitive and confidential information
20 regarding competitive strategy. The disclosure of such confidential
21 information would create a risk of significant competitive injury and
22 particularized harm and prejudice to Oracle.

23 d. Ex. P consists of pages 44-51 of Plaintiff's May 22, 2009 Supplemental
24 and Amended Initial Disclosures. Oracle has narrowly tailored its
25 request by only requesting redaction or sealing of the specific number
26 calculations included in these Disclosures. Those specific financial
27 calculations are non-public, commercially sensitive and confidential. The
28 disclosure of such confidential information would create a risk of

1 significant competitive injury and result in particularized harm and
2 prejudice to Oracle.

3 e. Exhibit Q consists of Exhibit 440 to deposition of Juergen Rottler,
4 Executive Vice President Oracle Customer Services. This exhibit is
5 comprised of an email from Mr. Rottler, dated November 11, 2005, sent
6 to a high-level approvals organization, Gary Miller, Priscilla Morgan and
7 Juan Jones (Bates stamped ORCL00319502-00319506). Exhibit Q is an
8 internal email exchange among a handful of senior Oracle employees
9 involved in Oracle's support pricing and customer negotiations which
10 contains confidential, commercially sensitive, internal customer negotiations, as
11 well as Oracle's internal analyses and decision-making and approvals
12 procedures regarding such confidential negotiations and policy exceptions. In
13 addition, this document contains private and confidential customer-specific
14 financial information. Absent the requested sealing, Exhibit Q would
15 provide valuable insight into Oracle's pricing and support strategies,
16 giving Oracle's current and prospective customers and Oracle's
17 competitors specific competitive leverage to use against Oracle. The
18 disclosure of such confidential information would create a risk of
19 significant competitive injury and particularized harm and prejudice to
20 Oracle.

21 4. Portions of Defendants' Motion for Sanctions and portions of the Declaration of
22 Stephen K. Clarke in Support of Defendants' Motion for Sanctions (the "Clarke Declaration")
23 contain quotes or other descriptions from documents identified herein that have been designated
24 by Oracle as "Confidential Information" or "Highly Confidential Information - Attorneys' Eyes
25 Only." Oracle has narrowly tailored its request by only requesting redaction or sealing of the
26 specific passages that contain non-public, commercially sensitive confidential information, the
27 disclosure of which would create a significant risk of competitive injury and particularized harm
28 and prejudice to Oracle. Those passages include direct quotation of the confidential deposition

1 testimony described above in Paragraph 3(a) above, and contained in the Clarke Declaration, as
 2 well as internal commercially sensitive customer financial information contained in paragraph 27
 3 of the Clarke Declaration. Defendants' Motion for Sanctions quotes liberally from the
 4 confidential, commercially sensitive deposition testimony and documents discussed in Paragraph
 5 3 above, including on pages 10-12, 16-19 and 22-23. Consistent with Paragraph 3 above, the
 6 disclosure of such confidential information would create a risk of significant competitive injury
 7 and particularized harm and prejudice to Oracle.

8 5. Plaintiffs have protected information in Exhibits J, K, L, P and Q from improper
 9 public disclosure through the Stipulated Protective Order that is designed to prevent the Parties'
 10 private commercial information from being improperly disclosed. Under the terms of that Order,
 11 Plaintiffs designated certain documents, deposition transcripts and discovery responses
 12 containing private commercial information as either "Confidential" or "Highly Confidential -
 13 Attorneys' Eyes Only" prior to producing such documents in the course of discovery. As
 14 attested to above, Exhibits J, K, L, P and Q contain certain information taken from documents
 15 and testimony that was designated either "Confidential" or "Highly Confidential - Attorneys'
 16 Eyes Only". Absent the requested sealing, these exhibits would provide valuable insight into
 17 Oracle's competitive strategies, financial systems, pricing structures, and internal corporate
 18 structure, giving current and prospective customers and competitors specific leverage to use
 19 against Oracle. Further, Oracle has narrowly tailored its request for sealing by agreeing that the
 20 testimony and information contained in the above exhibits and pleadings, but not discussed in the
 21 paragraphs above, may be filed publicly.

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 23 **Exhibits Submitted in Support of Defendants' Motion to Compel Production of**
 24 **Financial Information**

25 6. I also have reviewed the documents identified as Exhibits 2, 6, 7, 8, 9, 10, 11, 18
 26 and 19 to the Declaration of Jason McDonnell in Support of Defendants' Motion to Compel
 27 Production of Financial Information of Plaintiffs (the "McDonnell Declaration"). Each of these
 28 exhibits contains non-public, commercially sensitive and confidential information the disclosure

1 of which would create a risk of significant competitive injury and particularized harm and
 2 prejudice to Oracle.

3 7. Oracle has narrowly tailored its request by only requesting redaction or sealing of
 4 the specific passages and information that contain the most commercially sensitive and
 5 confidential information. These exhibits contain the following types of confidential and
 6 commercially sensitive information justifying their protection under Rule 26(c) and Local Rule
 7 79-5, particularly given that it includes cited testimony from the highest possible executive levels
 8 at Oracle:

9 a. Ex. 2 consists of a Letter from Jason McDonnell to Holly House, dated
 10 July 13, 2009. This exhibit contains quotations and recitations of non-
 11 public, commercially sensitive and confidential testimony from Oracle
 12 regarding Oracle's internal financial accounting, reporting systems, and
 13 corporate structure. Oracle has narrowly tailored this request in particular
 14 by only requesting redaction or sealing of the specific testimonial
 15 quotations or recitations in the letter. The disclosure of such confidential
 16 information would create a risk of significant competitive injury and
 17 particularized harm and prejudice to Oracle.

18 b. Ex. 6 contains testimony from the deposition of Ivgen Guner, Oracle's
 19 Vice President Financial Planning & Analysis, taken September 4, 2008
 20 (pages 63-64 and 72-73). These portions of Ms. Guner's testimony
 21 contain non-public, commercially sensitive and confidential information
 22 regarding Oracle's internal financial accounting, reporting systems, and
 23 corporate structure. The disclosure of such confidential information
 24 would create a risk of significant competitive injury and particularized
 25 harm and prejudice to Oracle.

26 c. Ex. 7 contains testimony from the deposition of Safra Catz, Oracle's Co-
 27 President, taken March 27, 2009 (pages 179-180). This specific
 28 testimony represents non-public, commercially sensitive and confidential

1 information relating to Oracle's internal financial accounting and
2 reporting systems. The disclosure of such confidential information would
3 create a risk of significant competitive injury and particularized harm and
4 prejudice to Oracle.

5 d. Ex. 8 contains testimony from the deposition of Corey West, Senior Vice
6 President, Corporate Controller and Chief Accounting Officer, taken
7 April 9, 2009 (pages 69-70 and 170-179). These portions of Mr. West's
8 testimony contain non-public, commercially sensitive and confidential
9 information regarding Oracle's internal financial accounting, reporting
10 systems, and corporate structure. The disclosure of such confidential
11 information would create a risk of significant competitive injury and
12 particularized harm and prejudice to Oracle.

13 e. Ex. 9 contains testimony from the deposition of Larry Ellison, Oracle's
14 CEO, taken May 5, 2009 (pages 47-49). This specific testimony
15 represents non-public, commercially sensitive and confidential
16 information regarding Oracle's internal financial accounting, reporting
17 systems, and corporate structure. The disclosure of such confidential
18 information would create a risk of significant competitive injury and
19 particularized harm and prejudice to Oracle.

20 f. Ex. 10 contains testimony from the deposition of Juergen Rottler,
21 Executive Vice President Oracle Customer Services, taken May 13, 2009
22 (pages 177-180 and 194-196). This testimony contains non-public,
23 commercially sensitive and confidential information regarding Oracle's
24 internal financial accounting, reporting systems, and corporate structure.
25 The disclosure of such confidential information would create a risk of
26 significant competitive injury and particularized harm and prejudice to
27 Oracle.

28 g. Ex. 11 is comprised of Exhibit 445 to the deposition of Juergen Rottler,

1 Executive Vice President Oracle Customer Services. This exhibit
2 contains confidential and commercially sensitive information justifying
3 its protection, particularly given that the information comes from the
4 highest executive levels at Oracle. More specifically, Exhibit 11 is an
5 email from Juergen Rottler, to Charles Phillips, Oracle's Co-President,
6 entitled "Slides for Today's Services review," and attaching a PowerPoint
7 entitled "lje review sept 7th.ppt". My understanding is that this exhibit
8 was created for a high-level executive presentation to Oracle's CEO,
9 Larry J. Ellison. Exhibit 11 is Bates stamped ORCL00368543-00368544
10 and ORCL00368549. Exhibit 11 is an internal exchange among the
11 highest-level Oracle executives that attaches non-public, commercially
12 sensitive and confidential financial information across Oracle's product
13 lines. Absent the requested sealing, Exhibit 11 would provide valuable
14 insight into competitively sensitive financial information at Oracle
15 concerning its product lines. The disclosure of such confidential
16 information would create a risk of significant competitive injury and
17 particularized harm and prejudice to Oracle.

18 h. Ex. 18 consists of a Letter from Jason McDonnell to Zac Alinder, dated
19 June 12, 2009, that contains quotations and recitations of non-public,
20 commercially sensitive and confidential testimony from Oracle regarding
21 Oracle's internal financial accounting, reporting systems, and corporate
22 structure. Oracle has narrowly tailored this request in particular by only
23 requesting redaction or sealing of the specific testimonial quotations or
24 recitations in the letter. The disclosure of such confidential information
25 would create a risk of significant competitive injury and particularized
26 harm and prejudice to Oracle.

27 i. Ex. 19 contains testimony from the deposition of Uyen Ngoc Anne
28 Kishore, Senior Director of Oracle's Tax Department, taken April 14,

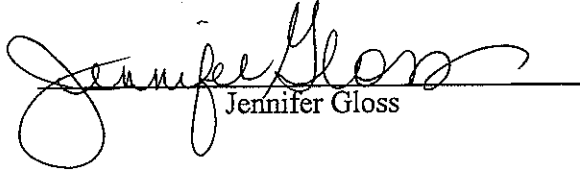
2009 (Pages 63, 67, 78-79, 82-83, 94-95, 105-107, 122-126, 135, 150, 155, 159-160, 183-188, 195, 206, 208 and 222-226). These portions of Ms. Kishore's testimony contain non-public, commercially sensitive and confidential information regarding Oracle's internal financial accounting, reporting systems, royalty payments, tax strategies, cost allocations, transfer pricing policies and corporate structure. The disclosure of such confidential information would create a risk of significant competitive injury and particularized harm and prejudice to Oracle.

8. Further, portions of Defendants' Motion to Compel contain quotes or other descriptions from documents identified herein that have been designated by Oracle as "Confidential Information" or "Highly Confidential Information - Attorneys' Eyes Only." Oracle has narrowly tailored its request by only requesting redaction or sealing of the specific passages that contain non-public, commercially sensitive confidential Oracle or Oracle customer information. Those passages include direct quotation of the confidential deposition testimony described above in Paragraph 7. Defendants' Motion to Compel quotes from the confidential, commercially sensitive deposition testimony and documents discussed in Paragraph 7 above, including on pages 3 and 6-16. Consistent with Paragraph 7 above, the disclosure of such confidential information would create a risk of significant competitive injury and particularized harm and prejudice to Oracle.

9. Plaintiffs have protected information in Exhibits 2, 6, 7, 8, 9, 10, 11, 18 and 19 from improper public disclosure through the Stipulated Protective Order that is designed to prevent the Parties' private commercial information from being improperly disclosed. Under the terms of that Order, Plaintiffs designated certain documents, deposition transcripts and discovery responses containing private commercial information as either "Confidential" or "Highly Confidential - Attorneys' Eyes Only" prior to producing such documents in the course of discovery. As attested to above, Exhibits 2, 6, 7, 8, 9, 10, 11, 18 and 19 contain certain information taken from documents and testimony that was designated either "Confidential" or "Highly Confidential - Attorneys' Eyes Only". Absent the requested sealing, these exhibits

1 would provide valuable insight into Oracle's internal competitive strategies, financial systems,
2 pricing strategies, and corporate structure, giving current and prospective customers and
3 competitors specific leverage to use against Oracle. Further, Oracle has narrowly tailored its
4 request for sealing by agreeing that the testimony and information contained in the above
5 exhibits and pleadings, but not discussed in the paragraphs above, may be filed publicly.

6 I declare under penalty of perjury that the foregoing is true and correct. Executed
7 in Redwood Shores, California, on July 20, 2009.

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